

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

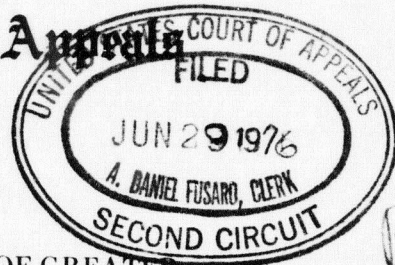
ORIGINAL

76-7108

United States Court of Appeals

For the Second Circuit

Docket No. 76-7108



DRYWALL TAPERS AND POINTERS OF GREATER
NEW YORK, LOCAL 1974,

and

CHARLES LONG, *et al.*, individually, etc.,
Appellees,

v.

OPERATIVE PLASTERERS' AND CEMENT MASONS'
INTERNATIONAL ASSOCIATION, *et al.*,
Appellants.

On Appeal From the United States District Court for the
Southern District of New York

**PETITION FOR REHEARING OF OPERATIVE
PLASTERERS' AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION, *et al.***

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DRYWALL TAPERS AND POINTERS OF
GREATER NEW YORK, LOCAL 1974,

and

CHARLES LONG, et al.,
individually, etc.,

Plaintiffs-Appellees

v.

OPERATIVE PLASTERERS' AND CEMENT
MASONS' INTERNATIONAL ASSOCIA-
TION, et al.,

Defendants-Appellants

No. 76-7108

PETITION FOR REHEARING

COME NOW the Petitioners-Appellants Operative Plasterers' and Cement Masons' International Association (hereinafter "OPCMIA") and Locals 60, 202 and 852 of the OPCMIA, by and through counsel, and hereby request the United States Court of Appeals for the Second Circuit to grant them a rehearing with respect to the limited issue of the scope of the District Court's injunctive order affirmed by this Court.

On June 18, 1976, the United States Court of Appeals for the Second Circuit issued an opinion in the instant case affirming an injunction issued by the United States District Court for the Southern District of New York on March 12, 1976. As noted by the Court of Appeals, this injunction requires the Petitioners to comply with an agreement known as the 1961 Memorandum of Understanding by removing and/or causing to be removed from the performance of any work involving the taping or pointing of drywall surfaces (ex-

cept for any drywall surfaces that are to receive plaster finish, acoustical finish or imitation acoustical finish), at any jobsite or jobsites, wheresoever located, at which such work is being performed or is to be performed, any and all persons presently performing such work who are members of the Petitioners or of any subordinate body of any of the Petitioners. The Court of Appeals approved of the scope of this injunction finding that:

" . . . While this order covers an unlimited geographical area, it only reflects the universality of the 1961 Memorandum that governs work jurisdiction in such cases. Indeed, there is evidence in the record that Plasterers have asserted jurisdiction over the work at issue in areas outside New York City where this dispute originated. Since this action has been brought on behalf of the class of all painters who might be deprived of their rightful work province, the district court acted within its proper discretion in entering such a broad order."
(Slip Op. p. 4240) [Emphasis added]

The Petitioners have complied with the broad scope of the District Court's Order by notifying its subordinate bodies of the injunction and directing them to comply with the injunction. Nevertheless, the Petitioners believe that the injunction is overly broad and that the Court of Appeals' finding as set forth above overlooks and misapprehends several important points of law and fact.

1. Contrary to the Court of Appeals' finding that the present "action has been brought on behalf of the class of all painters who might be deprived of their rightful work province" as a result of actions by the Petitioners (Slip Op. p. 4240), the Appellees' Verified Complaint clearly states that the "class represented consists of all members of plaintiff Drywall Tapers and

Pointers of Greater New York, Local 1974, employed or seeking employment as drywall tapers within the jurisdiction of such local labor organization,^{1/} (7a) (emphasis added) which jurisdiction is limited to "the five boroughs of the City of New York and certain portions of Nassau County" (9a). The individual class representatives are alleged to be members of the Appellee Local 1974 and employed or seeking employment within the jurisdiction of Local 1974 (9a). We submit that the Court of Appeals by its opinion has expanded the class designated by the Plaintiffs in the court below.

The only entity which could remotely supply an interest in or standing to obtain a nationwide injunction like that issued by the District Court is the International Brotherhood of Painters and Allied Trades (hereinafter "IBPAT"), but that organization's only participation in this case was the filing of a short amicus memorandum in this Court. Surely, that is an insufficient basis upon which to find that the class designated by Appellees should be expanded by the Court.

2. The scope of the order issued by the District Court is well beyond the request for relief contained in the Appellees' Verified Complaint, which, of course, was consistent with the scope of Plaintiffs' alleged claim. The only injunctive relief requested by the Appellees in their Complaint is that the Petitioners Local 60, Local 202 and Local 852 (the New York City area

^{1/}References to page numbers designated "a" are to the printed appendix.

local unions) be restrained "from asserting jurisdiction over any work involving taping or pointing of drywall that is not to receive plaster finish, or acoustical finish or imitation acoustical finish." (21a-22a) The Complaint does not include the Petitioner OPCMIA and all of its subordinate bodies within its request for injunctive relief nor does the Complaint ask the Court to impose a nationwide injunction on the Petitioners requiring them to remove their members and members of their subordinate bodies from jobsites "wheresoever located". Indeed, the alleged instances of plasterers' usurpation of painters' job rights set forth in the Verified Complaint are confined to the geographical jurisdiction of Appellee Local 1974, i.e., "the five boroughs of the City of New York and certain portions of Nassau County." (9a, 12a-19a) Furthermore, the Appellees do not allege and have not shown any legitimate interest in or standing to request a nationwide injunction restraining alleged violations of the 1961 Memorandum of Understanding outside of the territorial or geographical jurisdiction of Local 1974.

3. Although the Court of Appeals found that "there is evidence in the record that Plasterers have asserted jurisdiction over work at issue in areas outside New York City," there is absolutely no evidence concerning the circumstances of such assertion of work jurisdiction. The 1961 Memorandum of Understanding covers several other items of work jurisdiction unrelated to the pointing and taping of drywall. OPCMIA local unions operating in other parts of the country may have agreed to special jurisdictional arrangements with IBPAT local unions whereby the OPCMIA

locals would perform pointing and taping work in return for jurisdictional concessions to the IBPAT locals. There are a myriad of interpretations that IBPAT and OPCMIA local unions may have placed on the 1961 Memorandum of Understanding, some of which may be in conflict with the Court's interpretation of said agreement. Moreover, OPCMIA local unions in other parts of the country may be performing drywall pointing and taping work on the basis of NLRB job decisions or job decisions of the Impartial Jurisdictional Disputes Board which have long been accepted by IBPAT local unions as consistent with the 1961 Memorandum. In short, the record in the present case is devoid of any evidence that OPCMIA local unions are unilaterally usurping the work jurisdiction of IBPAT local unions throughout the United States and that a nationwide injunction is necessary.

4. By approving the scope of the District Court's order, the Court of Appeals has drastically altered the status quo. There have been absolutely no allegations, and there is no evidence in the record to support a finding that members of the Appellee Local 1974 are employed throughout the United States, have been deprived of any work outside the New York City area, or that Local 1974 or its members are capable of filling jobs throughout the United States which are left vacant as a result of the District Court's order. As a remedy for what is, at most, a local dispute expressly confined to the geographical jurisdiction of Local 1974, the District Court has granted to the Appellees a nationwide injunction which was neither requested in the Complaint nor shown to be

needed. Rather than preserving the status quo, the preliminary injunction approved by the Court of Appeals goes well beyond extending complete relief to the Appellees. The injunction grants to the Appellees relief beyond which they have any legitimate interest.

5. The District Court's order sweeps within its injunction entities which are not and have never been a part of the present proceeding - OPCMIA local unions outside of New York City. By expanding its injunctive order to include all subordinate bodies of the Petitioners (i.e., local unions of the OPCMIA), the District Court has made an implied finding that the OPCMIA and all of its affiliated local unions are a single entity for purposes of injunctive relief. The record contains no evidence on which the District Court could base such a finding (which was not made). Federal courts have long since abandoned the fiction that local unions are the mere agents of the internationals to which they are affiliated. Thus, many years ago, the Supreme Court fashioned the rule (still in effect today) that the mere fact that a local union is affiliated with an international union and subject to its constitution does not make the local the agent of the international, or vice versa, with one liable for the unauthorized acts of the other. United Mine Workers v. Coronado Co., 259 U.S. 344 (1922).

One of the clearest expressions of the legal relationship between an international and local union appears in the District Court's decision in Axel Newman Heating and Plumbing Co. v. Sheet Metal Workers International Association, 37 LRRM 2038 (D. Minn.

1955) (not reported in F.Supp.). In a Section 303 suit seeking damages from both the local and international union, the Court held that locals of the Sheet Metal Workers International were separate legal entities notwithstanding the fact that the international president had the authority to direct and supervise all the local unions, to suspend a local union or remove officers after charges, and to take over control and management of local unions for certain specified reasons. The international's constitution also required local unions and their members to observe the provisions and requirements of the international constitution and forbade the adoption of any rules, regulations or policies which conflicted with the provisions of that constitution. The Court reasoned as follows:

"The Local, while it is regulated or controlled in some of its activities by provisions in the International Constitution and moreover, is subject to supervision in some of its activities by the General President and the General Executive Council on behalf of the International, is still not so regulated or controlled by the International in its activities as a whole as to be a mere branch, arm or agency of the International. The fact that the International has the right to supervise or control some of the affairs of the local is not inconsistent with the premise of the International that its affiliated local unions are separate entities, whose business activities are distinct from those of the International. The Court is aware that some degree of control over the affairs of local chapters is always retained or acquired by national organizations who charter local chapters and, therefore, the character of the affairs subject to supervision or regulation by the International must be weighed against the character of the affairs left to the local union's discretion. Under the International's

constitution, the affiliated local unions retain or acquire broad powers of self-government and the right or power to enter into business transactions on their own behalf through their own duly elected Business Agents or Representatives. These latter powers are especially significant and lead the Court to conclude that affiliated local unions are separate organizations or entities rather than mere branches, arms or agencies of the International."

37 LRRM at 2040 (emphasis added).

See also, Gray v. International Association of Asbestos Workers, 416 F.2d 313 (6th Cir. 1969); Barefoot v. IBT, 424 F.2d 1001 (10th Cir. 1970); Morgan Drive-Away, Inc. v. Ibt, 268 F.2d 871 (7th Cir. 1959), cert. denied, 361 U.S. 896 (1959); Hansen v. Hutcheson, 217 F.2d 171 (7th Cir. 1954); DiGiorgio Fruit Corp. v. NLRB, 191 F.2d 642 (D.C. Cir. 1951), cert. denied, 342 U.S. 869 (1952); Navios Corp. v. National Maritime Union, 289 F.Supp. 197 (E.D. Pa. 1968); Krulikowsky v. United Brotherhood of Carpenters, 270 F.Supp. 122 (E.D. Pa. 1967); Bailey v. Transportation - Communication Union, 45 FRD 444 (N.D. Miss. 1968); Dominquez v. National Air Lines, 63 LRRM 2459 (S.D.N.Y. 1966); Farnsworth Co. v. Sheet Metal Workers, 125 F.Supp. 830, 833 (D.N.M. 1954); Daily Review Corp. v. International Typographical Union, 9 FRD 295 (E.D.N.Y. 1949); Isbrandtsen Co. v. National Marine Engineers Beneficial Association, 9 FRD 541 (S.D.N.Y. 1949).

In the present case, the Appellees did not in any way attempt to establish that the OPCMIA and its local unions are a single entity so that an injunction binding against the OPCMIA should also be binding against its affiliated local unions. Of

course, the Memorandum of Understanding is nationwide in scope and perhaps the District Court's injunction could apply to any area where the OPCMIA is representing employees on jobs through direct contracts with employers (if there was evidence to support such a finding), but to include within its scope all affiliated local unions of the OPCMIA is unwarranted.

Thus, without the benefit of any sort of evidentiary basis, the District Court and, apparently, the Court of Appeals have concluded that all local unions affiliated with the OPCMIA are required to remove from jobsites throughout the United States members of such local unions who are performing pointing and taping work which is not in compliance with the 1961 Memorandum of Understanding. The vast majority of these local unions have never heard of the Appellees and the present lawsuit, nor are they aware of any dispute concerning the 1961 Memorandum of Understanding. The Petitioners contend that the District Court was in error by enjoining these local unions which are not parties to the present action and that the Court of Appeals was similarly in error by affirming the District Court's order.

6. The final point which must be made with respect to the scope of the District Court's order concerns the effect the order has on contrary administrative decisions issued in other parts of the United States and pending judicial proceedings elsewhere. For example, the National Labor Relations Board, which is charged by Congress to resolve work jurisdiction disputes under Section 10(K) of the National Labor Relations Act, 29 U.S.C.

\$160(K), (if the parties cannot) and which has had many years of experience in the jurisdictional thicket, decided a case in 1974 involving the pointing and taping of drywall in favor of the OPCMIA. See Painters and Drywall Finishers Local No. 79 and O'Brien Plastering Co., 213 NLRB No. 106, 87 LRRM 1591 (1974). The District Court's injunction against the Petitioners is so sweeping in scope that it will mean that employees represented by a subordinate body of the OPCMIA who were awarded their work on the basis of the above-cited case will be removed from their jobs in Denver, Colorado.

More recently, in the United States District Court for the District of New Jersey, a lawsuit similar to that in the instant case was filed by Drywall Tapers and Finishers Local Union No. 1976 against Prince Carpentry, Inc., a member of the Metropolitan Drywall Contractors Association, Inc. (C.A. No. 76-821 VPB, U.S. Judge Vincent P. Biuno). This lawsuit alleged that Prince Carpentry was assigning drywall pointing and taping work to members of the OPCMIA Local Union No. 29 in violation of Local 1976's collective bargaining agreement with Prince. In a letter dated May 5, 1976, the attorney for Local 1976 asked the Chairman of the Impartial Jurisdictional Disputes Board, Mr. Fred Driscoll, whether the Joint Administrative Committee of the Building and Construction Trades Department, AFL-CIO had lifted or would lift the moratorium declared in its letter of December 11, 1973, on jurisdictional disputes involving the pointing and taping of drywall (copy of letter attached as Exhibit A). Mr. Driscoll in a letter dated May 7,

1976, to the General President of the IBPAT indirectly answered this request by stating that the so-called moratorium on jurisdictional disputes involving the pointing and taping of drywall was no longer operational, and that the Impartial Board would entertain a request for a job decision involving the jurisdictional dispute which is the basis of the lawsuit filed by Local 1976 against Prince Carpentry (copy of letter attached as Exhibit B). The dispute was accepted by the Impartial Board and the parties to the New Jersey lawsuit agreed to an adjournment to allow for resolution of the dispute by the Impartial Board. The District Court approved of this adjournment.

On June 10, 1976, the Impartial Jurisdictional Disputes Board held a hearing with respect to the New Jersey jurisdictional dispute between the IBPAT Local 1976 and the OPCMIA Local 29. The hearing was attended by representatives of Prince Carpentry, the OPCMIA and the IBPAT. Despite the IBPAT's claims with respect to the applicability of the 1961 Memorandum of Understanding, the Board found that the "Green Book" 1947 Decision of Record was controlling and that because the material used by the contractor on the New Jersey job was plaster, the contractor's work assignment to members of OPCMIA Local 29 was proper. The Board voted to refer this jurisdictional dispute to a Hearings Panel for a national decision pursuant to Article VI, Section 4 of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (copy of decision dated June 11, 1976, attached as Exhibit C). On June 11, 1976, Mr. Driscoll formally requested the Joint Adminis-

trative Committee to convene a Hearings Panel to decide the on-going dispute between the IBPAT and the OPCMIA concerning the pointing and taping of drywall (copy of letter attached as Exhibit D). By letter dated June 18, 1976, the IBPAT notified the Chairman and Vice Chairman of the Joint Administrative Committee that it strongly objected to the establishment of a Hearings Panel to resolve the jurisdictional dispute between the IBPAT and the OPCMIA. The IBPAT stated that the only issue which it wished resolved by the Hearings Panel was the present applicability of the 1961 Memorandum of Understanding (copy of letter and exhibits attached as Exhibit E).

The point of the above recital of facts is that the Impartial Jurisdictional Disputes Board with the approval of the U.S. District Court in New Jersey has held a hearing on the issue of drywall pointing and taping jurisdiction, and it has ruled that despite the IBPAT's showing with respect to the 1961 Memorandum of Understanding, members of the OPCMIA are entitled to do the work. This work was being done by members of the OPCMIA when the Court of Appeals issued its decision. This Court's approval of the District Court's injunction apparently interferes with the action of the Impartial Jurisdictional Disputes Board in that case, casts a cloud over the District Court proceedings in New Jersey, and substantially disrupts the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

In addition, on June 22, 1976, the OPCMIA received a copy of a Recommendation of the Chairman and Vice Chairman of the

Joint Administrative Committee to the Committee recommending that the instant dispute be referred to a Hearings Panel under the Impartial Umpire. This recommendation was accepted by a majority of the Committee, all but one of whom noted their acceptance before the issuance of the decision by the Court of Appeals on June 18, 1976 (see attached Exhibit F).^{2/}

This means that the underlying issue of work jurisdiction will now be finally and fully resolved by the internal machinery of the Building and Construction Trades Department. This is where the lower court, with the implied approval of this Court (Op. 4232), believed the matter should be resolved. This, we submit, is another reason why the scope of the injunction should be limited to the territorial jurisdiction of Local 1974. The order, as presently written, will have the effect of disrupting established collective bargaining relationships in areas far removed from the New York area without any rational basis in the record to do so and at a time when the basic dispute is in the process of being resolved by the agency that all parties agree should resolve the issue. Since there is no evidence in the record of live controversies in areas other than New York,^{3/} the Court should reconsider the poten-

^{2/} The Joint Administrative Committee authorized the parties to make copies of its decision available to the Court of Appeals (See p. 5 of Exhibit F).

^{3/} Other than the New Jersey dispute which is before the Federal District Court there.

tially disruptive effect its approval of the broad injunction will have on collective bargaining relationships all over the country.

Conclusion

In sum, it is apparent from the above discussion that the District Court's injunctive order in the present case is unnecessarily and improperly broad in its scope. The Petitioners respectfully request the Court of Appeals to reconsider the instant appeal and limit the District Court's order to the scope of the Appellees' legitimate geographical area of interest, i.e., the five boroughs of New York City and parts of Nassau County.

Respectfully submitted,

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May 5, 1976

FILE: 20-949

Fred J. Driscoll, Jr., Chairman
Impartial Jurisdictional Disputes Board
for the Construction Industry
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Prince Carpentry, Inc.
301 East 57th Street
New York, New York 10000

Operative Plasterers Local No. 29
130 Central Avenue
Jersey City, N.J. 07036

re: Drywall Tapers Local 1976, et als -v- Prince Carpentry, Inc.

Gentlemen:

On April 9, 1976, Fred J. Driscoll, Jr., Chairman of the Impartial Jurisdictional Disputes Board for the Construction Industry wrote to S. Frank Raftery, General President of the Painters International Union, advising that the jurisdictional dispute between Drywall Tapers Local No. 1976 and Operative Plasterers Local No. 29 concerning the drywall taping work at Galaxy Apartments, Guttenberg, N.J., with the Prince Carpentry, Inc., as the employer should be settled and adjusted under the procedural rules and regulations of the Impartial Jurisdictional Disputes Board for the Construction Industry. On behalf of Tapers Local 1976, we have filed a Federal District Court Complaint today, against Prince Carpentry, Inc., requesting that Prince Carpentry's assignment of the work in question to Operative Plasterers Local No. 29 be enjoined.

The purpose of this letter, specifically to Chairman Driscoll, is to ask him whether the Joint Administrative Committee of the Impartial Jurisdictional Disputes Board has lifted or will lift the moratorium declared in its memorandum of December 11, 1973, when it advised that it would no longer review such jurisdictional disputes because of their repetitive nature.

I am requesting that Chairman Driscoll advise me immediately if the

Ex. A

May 5, 1976

Joint Administrative Committee will hear and decide the jurisdictional dispute involved herein, since if it will, we have no objection to submitting the dispute to that Board for determination.

Of course, we must also know that Prince Carpentry, Inc. has agreed or will agree to be bound by the decision of the Joint Administrative Committee of the Impartial Jurisdictional Disputes Board.

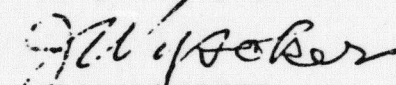
I am, therefore, asking Chairman Driscoll to reply to me as soon as possible, so that we can advise the Court if that procedure is to be utilized for this purpose. The Court has set up a schedule for filing Answer, discovery proceeding, submission of brief, and ruling by June 7, 1976, and therefore it is urgent that we get your reply immediately.

I am also sending this letter to both Prince Carpentry, Inc. and Operative Plasterers Local No. 29, so that it or its attorneys can also confirm to me that they agree to utilization of the Impartial Jurisdictional Disputes Board procedure, provided that Board agrees to hear and decide the dispute.

I repeat, I would appreciate hearing from Mr. Driscoll immediately, and from Prince Carpentry, Inc. and Operative Plasterers Local No. 29, or their legal representatives, as soon as possible.

If there are any questions about the above, please advise.

Very truly yours,


JACK WYSOKER

JW/klo

cc: James Shay, I.B.P.A.T.

David Barr, Esq.

Theodore R. Manhire, Business Representative, Tapers Local 1976

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STERling 3-6817

May 7, 1976

In Reply Refer to **4/3/76**

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

The enclosed letter of April 2, 1976 has been received from Jack Wyosker, Esq., who is representing Drywall Tapers Local 1976 regarding what is obviously a jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over the finishing of drywall panels on the Galaxy Apartments, Guttenberg New Jersey, Tisman Construction Company contractor, Prince Carpentry subcontractor.

As you are aware, the Plan and the Procedural Rules and Regulations of the Impartial Jurisdictional Disputes Board preclude my corresponding directly with a local union or its representatives. I will therefore answer the letter to the best of my ability through you.

To begin with, this is a jurisdictional dispute between two affiliates of two International Unions over the responsible contractor's, Prince Carpentry's, work assignment which has been made to the members of Plasterers Local No. 29. Both International Unions are members of the Building and Construction Trades Department, AFL-CIO; and, by virtue of Article X of its Constitution, you and Drywall Tapers Local No. 1976 are required to resolve your jurisdictional dispute through the current Plan established by the Department. The current Plan established this Board to resolve such disputes. Your local union is violating the Constitution of the Department, The Plan, and the Procedural Rules and Regulations of this Board by having requested the Federal Court to vacate the responsible contractor's work assignment.

On December 11, 1973, the Joint Administrative Committee, pursuant to Article X, Sec. 2, of the Plan, reviewed the record of decisions and pending cases in jurisdictional disputes involving

1. Patching and plastering of concrete ceilings, and

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Ex. B

BEST COPY AVAILABLE

May 7, 1976

2. Pointing and taping of drywall surfaces. The Joint Administrative Committee referred these disputes to the respective General Presidents for the purpose of attempting to reach a national agreement governing future jurisdiction. The Joint Administrative Committee also instructed the Board to defer action on any request for a job decision in cases involving the above listed disputes. All of this was pursuant to Article X, Sec. 2, of the Plan (Green Book, pages 19 and 20). On January 28, 1974 the Board advised you that Item No. 1 was confined to patching and plastering of concrete ceilings and did not extend to other plastering operations. Copies of both of these letters are enclosed for ready reference.

The action of the Joint Administrative Committee was pursuant to Article X, Sec. 2 of the Plan. This article explicitly states that the Joint Administrative Committee shall refer the matter to the International Unions involved for a period of not more than 90 days. If the International Unions failed to reach an agreement within the 90-day period, the Joint Administrative Committee was to have referred the disputes to the Hearings Panel for a national decision. No agreement was reached by the International Unions, and the Joint Administrative Committee did not act at the expiration of the 90-day period. Therefore the instructions of the Joint Administrative Committee to the Board made pursuant to Article X, Sec. 2, expired on March 11, 1974 because of their not referring these disputes to a Hearings Panel, as required.

The Impartial Jurisdictional Disputes Board will entertain a request for a job decision in this particular dispute, and the Board will render a decision if such a request is made. The Board will also accept future requests and will continue to do so until the Joint Administrative Committee undertakes action similar to that referred to in the December 11, 1973 letter.

I trust that the above will answer the questions posed by Mr. Wysoker and that your Local Union will process any work assignment complaint

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S FRANK RAFTERY General President

-3-

May 7, 1976

in accordance with the Procedural Rules and Regulations of the Board,
as required by the Constitution of the Building Trades Department,
AFL-CIO, and that their pursuits in the Federal Court will be abandoned.

If you should have any questions concerning my interpretation of this
matter, please feel free to contact me.

Very truly yours,

FRED J DRISCOLL, JR.
Chairman

FJDJR/jl
Enclosure

cc: JOSEPH T POWER - Plasterers (wenc1)
TISHMAN CONST CORP-contr-666 5th Ave, New York NY 10019
PRINCE CARPENTRY-subcontr-301 E. 57th St, New York NY 10000
ROBERT A GEORGINE, Chairman, JAC
HARRY P TAYLOR, Vice Chairman, JAC

RECEIVED MAY 11 1976

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

June 11, 1976

In Reply Refer to:
NJ 6/11/76

JOSEPH T POWER General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

TISHMAN CONSTRUCTION COMPANY
Contractor
666 Fifth Avenue
New York New York 10019

PRINCE CARPENTRY INC
Subcontractor
115 East 57th Street
New York New York 10022

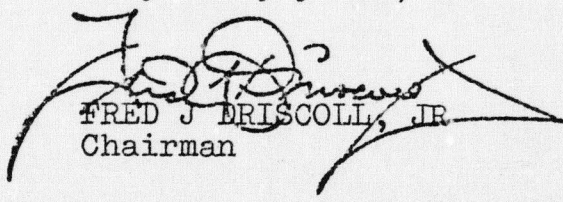
Gentlemen:

At its meeting June 10, 1976 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over drywall pointing, taping and finishing work, Galaxy Apartments project, Guttenberg New Jersey, Tishman Construction Company contractor, Prince Carpentry Inc subcontractor.

The Board found the work in dispute to be the pointing, taping and finishing of drywall joints, inside and outside corners, using a material known as USG 275 "Red Top" patching plaster and voted that there is no basis to change the contractor's assignment. The Board further voted to refer this jurisdictional dispute to a Hearings Panel for a national decision, pursuant to Article VI, Sec. 4, of the Plan for Settlement of Jurisdictional Disputes.

This action of the Board was predicated upon particualr facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,


FRED J. DRISCOLL, JR.
Chairman

FJDJR/mjk

cc: Robert A Georgine - B&CT Dept
Roger M Levin, Esq., Levin & Weissman, 122 East 42nd St, NY NY 10017

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Ex. C

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

June 11, 1976

In Reply Refer to: EJ 6/11/76

JOINT ADMINISTRATIVE COMMITTEE
Plan for the Settlement of Jurisdictional
Disputes in the Construction Industry
815 Sixteenth Street N W
Washington D C 20006

Gentlemen:

At its meeting June 10, 1976, the Impartial Jurisdictional Disputes Board rendered a decision in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over drywall pointing, taping and finishing work, Galaxy Apartments project, Guttenberg New Jersey, Tishman Construction Company contractor, Prince Carpentry Inc subcontractor.

The request for a job decision in this matter was initiated by Prince Carpentry Inc because Drywall Tapers and Finishers Local Union No. 1976 (IBPAT) had filed a civil action against them in the United States District Court of New Jersey (File No. 76-821 (VPB)) seeking an injunctive order restraining and enjoining Prince Carpentry Inc from using members of Plasterers Local No. 29 (OPCMA) to perform the work in dispute.

The decision of the Impartial Jurisdictional Disputes Board was as follows:

"The Board found the work in dispute to be the pointing, taping and finishing of drywall joints, inside and outside corners, using a material known as US3 275 "Red Top" patching plaster and voted that there is no basis to change the contractor's assignment.* The Board further voted to refer this jurisdictional dispute to a hearings panel for a national decision, pursuant to Article VI, Sec. 4, of the Plan for the Settlement of Jurisdictional Disputes." (*to plasterers)

EX. D

June 11, 1976

In view of this decision and subsequent action of the Board, I, on behalf of the Board, request that the Joint Administrative Committee establish a Hearings Panel as provided in Article X of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry as soon as possible so that the matter of "drywall pointing, taping and finishing work" can be resolved.

I do not believe that the parties to this "on-going" dispute will object to this action of the Board, because it is my understanding that President Raftery and President Power have requested that the matter be resolved by a Hearings Panel pursuant to an order issued by the United States District Court in New York City.

President Thomas F. Murphy of the International Union of Bricklayers and Allied Craftsmen will have to be invited to participate because in many areas of the United States and Canada the Plasterers are members of his organization.

Unless advised to the contrary by the Joint Administrative Committee, the Board will defer further action on any request for a job decision over this type of jurisdictional dispute until such time as the findings of the Hearings Panel are made known. We will also instruct the parties that, in the event of a dispute, the work is to proceed uninterrupted as assigned by the responsible contractor, unless there is an agreement between the trades involved or a directive from the Board authorizing a change in the original assignment.

It is anticipated that this action of the Board will result in a national decision which will be equitable and workable.

Very truly yours,

FRED J. DRISCOLL, JR.
Chairman

FJLJR/jl

cc: ROBERT A. GEORGINE - Chairman, JAC
HARRY P. TAYLOR - Vice Chairman, JAC
S. FRANK RAFTERY - Painters
JOSEPH T. POWER - Plasterers
THOMAS F. MURPHY - Bricklayers
LOUIS SHERMAN, Esq., 1125 Fifteenth Street, Washington D C 20005

INTERNATIONAL BROTHERHOOD OF
PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING, 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT

(202) 872-1444



GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

June 18, 1976

Mr. Robert A. Georgine
Chairman
Joint Administrative Committee
Plan for Settlement of
Jurisdictional Disputes
in the Construction Industry
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Mr. Harry P. Taylor
Vice Chairman
Joint Administrative Committee
Plan for Settlement of
Jurisdictional Disputes
in the Construction Industry
1101 - 17th Street, N.W.
Suite 305
Washington, D.C. 20036

Gentlemen:

I am writing with regard to Fred J. Driscoll, Jr.'s letter to you of June 11, 1976 and the decision rendered by the Impartial Jurisdictional Disputes Board in the Prince Carpentry, Inc. case which Chairman Driscoll identifies in the first paragraph of his letter.

First, as to the Board's decision in that specific case, we objected at the hearing, and now continue that objection, that the Board is not authorized to render a decision unless the contractor is properly stipulated in accordance with the Procedural Rules and Regulations, which read as follows:

"STIPULATION

"In signing this stipulation the undersigned (employer) (employer association on behalf of its members) agrees to be bound by the terms and provisions of the agreement establishing the Impartial Jurisdictional Disputes Board. In particular, the undersigned agrees to be bound by those provisions of the agreement requiring compliance with the decisions and awards of the Board, or Hearings Panels' [Art. VIII, Sec. 1(a)]. This stipulation shall run for the term of the agreement and shall continue in effect for each year thereafter unless

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Ex. E

Messrs. Robert A. Georgine
and Harry P. Taylor

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June 18, 1976

specifically terminated effective upon the anniversary date of said agreement, in accordance with the notice provisions contained in the agreement. The effective date of the agreement shall be June 1, 1975."

It is clear that under the Rules a contractor must agree unconditionally to be bound by the terms and provisions of the agreement establishing the Board, to be bound by the compliance provisions, and to be stipulated for the term of the agreement and thereafter as specified in the quoted language. Prince Carpentry's alleged stipulation dated June 3, 1976 (copy attached) did not comply with the Rules. It is limited to this specific job only, as evidenced by the following language:

"This agreement to be bound extends only to the job decision herein"

Obviously Prince Carpentry, Inc. is not bound by any prior decisions of the Board, any future Board decisions on the same issue--even involving Prince Carpentry, Inc. itself--or by any Hearings Panel decision that may subsequently ensue. Your Committee should immediately instruct the Board that its decision is illegal and is null and void.

Mr. Driscoll's letter requests the establishment of a Hearings Panel, stating:

"I do not believe that the parties to this 'on-going' dispute will object to this action of the Board, because it is my understanding that President Raftery and President Power have requested that the matter be resolved by a Hearings Panel pursuant to an order issued by the United States District Court in New York City."

Mr. Driscoll is not authorized to state a position on behalf of this Brotherhood. Our organization is quite capable of, and insists upon, speaking for itself. The fact is we did not request "that the matter be resolved by a Hearings Panel," as alleged in Mr. Driscoll's letter. I refer you to my letter of December 11, 1975 (copy attached) in which, pursuant to court order, we requested that a Hearings Panel be established solely to hear and determine the single issue of the validity of the 1961 Memorandum of Understanding by and between our organization, the Operative Plasterers and Cement Masons International Association, and the Bricklayers, Masons and Plasterers International Union (now the International Union of Bricklayers and Allied Craftsmen). In no uncertain terms my request was strictly limited to that one issue. We received no response from the Joint Administrative

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Messrs. Robert A. Georgine
and Harry P. Taylor

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June 18, 1976

Committee. In this context the Brotherhood protests and strongly objects to the establishment of a Hearings Panel for a "national decision," as requested by Mr. Driscoll.

The confusion resulting from these various communications and Board action, the illegal and unauthorized decision of the Board, and Chairman Driscoll's unseemly attempt to speak for the Brotherhood and overreach his own authority underline the importance and veracity of the position taken by the Executive Council of the Building Trades Department during its February meeting in Miami to the effect that the present Board structure is inadequate, that a new Board be established, and that an appellate procedure be reintroduced into the Plan. I urge the Committee to take all steps necessary to accomplish these much-needed reforms as soon as possible.

I wish to advise that until these matters are addressed and resolved to our satisfaction, our Brotherhood will not participate in or be bound by any proceedings or decisions of the Impartial Jurisdictional Disputes Board.

Very truly yours,

S. FRANK RAFTERY
General President

Enclosures

cc: All Joint Administrative
Committee Members (w/encs.)
[Gen. Pres. Joseph T. Power, OP&CMIA (w/encs.)
Gen. Pres. Thomas F. Murphy, BAC (w/encs.)
Mr. Fred J. Driscoll, Jr. (w/encs.)
Louis Sherman, Esq. (w/encs.)

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LEVIN & WEISSMAN

COUNSELLORS AT LAW

122 EAST 42ND STREET, NEW YORK, N. Y. 10017
212 / 667-7070

June 3, -1976

NS 4/9/76

Fred J. Driscoll, Jr., Chairman
Impartial Jurisdictional Disputes
Board for the Construction Industry
815 Sixteenth Street, N. W.
Washington, D. C. 20006

Dear Mr. Driscoll:

In view of the concern expressed by you over the binding force of the decision of the Impartial Jurisdictional Disputes Board upon our client, Prince Carpentry, Inc., and pursuant to your request, this is to advise you on behalf of our client, Prince Carpentry, Inc., that it agrees to be bound by the job decision rendered by the Impartial Jurisdictional Disputes Board concerning a jurisdictional dispute between affiliates of the Operative Plasterers and Cement Masons International Association and the International Brotherhood of Painters and Allied Trades over certain drywall pointing, taping and finishing work at an apartment house project in Bergen County, New Jersey known as Galaxy Apartments, 7000 Boulevard East, Guttenberg, New Jersey.

This agreement to be bound extends only to the job decision herein and is given subject to your assurances that the other parties to this dispute will similarly be bound by the job decision.

Very truly yours,

LEVIN & WEISSMAN

Roger M. Levin

Roger M. Levin

RML/mb

cc: Kenneth Gladstone
Prince Carpentry, Inc.
Jack Wysoker, Esq.
Judge Vincent P. Biunno

RECEIVED JUN 2 1 1976

December 11, 1975

Mr. Robert A. Georgine
Chairman
Joint Administrative Committee
Plan for the Settlement of
Jurisdictional Disputes
in the Construction Industry
815 Sixteenth Street, N. W.
Washington, D. C. 20006

Mr. Harry P. Taylor
Vice Chairman
Joint Administrative Committee
Plan for the Settlement of
Jurisdictional Disputes
in the Construction Industry
815 Sixteenth Street, N. W.
Washington, D. C. 20006

Gentlemen:

I enclose a decision by Judge Charles M. Metzner of the United States District Court for the Southern District of New York, dated November 5, 1975, in a case styled Drywall Tapers and Pointers of Greater New York, Local 1974, et al. v. Operative Plasterers and Cement Masons International Association of the United States and Canada, and Operative Plasterers Local 60, et al., 75 Civ. 4239.

You will note that an issue before the Court was the applicability of a Memorandum of Understanding dated November 29, 1961 between the Operative Plasterers and Cement Masons International Association of the United States and Canada, the Bricklayers, Masons and Plasterers International Union of America (now called International Union of Bricklayers and Allied Craftsmen) and the Brotherhood of Painters, Decorators and Paperhangers of America (now called the International Brotherhood of Painters and Allied Trades). A copy of that Memorandum is also enclosed.

In his opinion, Judge Metzner said: "It is clear that the issue of the present applicability of the 1961 Memorandum would be best decided by the Hearings Panel under the existing machinery of the Plan. Accordingly, the Court orders both Local 1974 through its International, and Plasterers to petition the Joint Administrative Committee for immediate referral to the Hearings Panel."

Pursuant to that order, the International Brotherhood of Painters and Allied Trades hereby requests that the Joint Administrative Committee

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Messrs. Robert A. Georgine
and Harry P. Taylor
December 11, 1975
Page 2

Immediately refer to a Hearings Panel the issue of the present applicability of the 1961 Memorandum of Understanding. That is the sole issue to be referred, the sole issue to be decided and the sole issue as to which a decision will bind this International.

Thanking you for your anticipated attention to this matter, I remain

Very truly yours,

S. FRANK RAFTERY
General President

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JOINT ADMINISTRATIVE COMMITTEE

Plan for Settlement of Jurisdictional Disputes
in the Construction Industry

815 - 16th Street, N.W.

Washington, D.C. 20006

RECOMMENDATION OF THE CHAIRMAN AND VICE CHAIRMAN TO THE MEMBERS OF THE JOINT ADMINISTRATIVE COMMITTEE IN THE MATTER OF THE JURISDICTIONAL DISPUTES BETWEEN OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION AND THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES OVER (1) THE PATCHING AND PLASTERING OF CONCRETE CEILINGS AND (2) POINTING AND TAPING OF DRYWALL SURFACES

It is the purpose of this memorandum to recommend a procedure under the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry which will result in a final determination of the jurisdictional issues in this case.

A review of pertinent documents in this case may serve to clarify the procedures that should be adopted under the Plan.

On December 11, 1973, the Chairman and Vice Chairman of the Joint Administrative Committee sent the following communication to S. Frank Raftery, General President of International Brotherhood of Painters and Allied Trades; Joseph T. Power, General President of Operative Plasterers and Cement Masons International Association; and Thomas F. Murphy, General President of Bricklayers, Masons and Plasterers International Union:

"Pursuant to Article X, Sec 2 of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry the Joint Administrative Committee at its meeting of December 4, 1973 reviewed the record of

EX. F

decisions and pending cases in jurisdictional disputes involving (1) the patching and plastering of concrete ceilings and (2) pointing and taping of drywall surfaces.

"The Committee also examined the November 29, 1961 Memorandum of Understanding to which the Bricklayers Masons and Plasterers International Union, the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association are parties. The cases in question involve only the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association.

"Following a discussion of the matter, the Joint Administrative Committee voted to notify President Murphy, President Power and President Raftery that effective immediately, in accordance with Article X, Sec 2 of the Plan, the above listed disputes are referred to their respective International Unions for the purpose of attempting to reach a national agreement governing future jurisdiction.

"In referring these disputes directly to the International Unions, the Joint Administrative Committee takes the position that their reference to the Chairman as repetitive disputes and the authorization by the Joint Administrative Committee to the Chairman to issue immediate decisions are not mandatory and in light of the history of such disputes, of doubtful value.

"The Joint Administrative Committee also voted to notify the Impartial Jurisdictional Disputes Board that the Board shall defer action on any request for a job decision in cases involving the type of jurisdictional disputes listed above.

"It is to be understood by all parties that in the event of a dispute over such work on any job, there will be no work stoppage, picket line or other interference and that work will proceed in accordance with the responsible contractor's original assignment unless changed by agreement between the disputing parties."

On December 11, 1975, General President Raftery sent the following letter to the Chairman and Vice Chairman of the Joint Administrative Committee:

"I enclose a decision by Judge Charles M. Metzner of the United States District Court for the Southern District of New York, dated November 5, 1975, in a case styled Drywall Tapers and Pointers of Greater New York, Local 1974, et al. v. Operative Plasterers and Cement Masons International Association of the United States and Canada, and Operative Plasterers Local 60, et al., 75 Civ. 4289.

"You will note that an issue before the Court was the applicability of a Memorandum of Understanding dated November 29, 1961 between the Operative Plasterers and Cement Masons International Association of the United States and Canada, the Bricklayers, Masons and Plasterers International Union of America (now called International Union of Bricklayers and Allied Craftsmen) and the Brotherhood of Painters, Decorators and Paperhangers of America (now called the International Brotherhood of Painters and Allied Trades). A copy of that Memorandum is also enclosed.

"In his opinion, Judge Metzner said: 'It is clear that the issue of the present applicability of the 1961 Memorandum would be best decided by the Hearings Panel under the existing machinery of the Plan. Accordingly, the Court orders both Local 1974 through its International, and Plasterers to petition the Joint Administrative Committee for immediate referral to the Hearings Panel.'

"Pursuant to that order, the International Brotherhood of Painters and Allied Trades hereby requests that the Joint Administrative Committee immediately refer to a Hearings Panel the issue of the present applicability of the 1961 Memorandum of Understanding. That is the sole issue to be referred, the sole issue to be decided and the sole issue as to which a decision will bind this International.

"Thanking you for your anticipated attention to this matter, I remain"

On March 12, 1976, General President Power sent a letter to the Chairman and Vice Chairman of the Joint Administrative Committee, which included the following statement:

"In light of the U. S. District Court's directive, the OP&CMIA hereby requests the Joint Administrative Committee to immediately refer to a Hearings Panel the issue of the jurisdictional dispute between the OP&CMIA and the IBPAT with respect to drywall pointing and taping.

While the IBPAT seeks to have the Hearings Panel consider a much narrower issue,^{1/} we believe that Article 10 of the Plan would require a decision on the overall dispute. Article 10, Section 4 requires the Hearings Panel 'to consider all pertinent evidence' and this would include: (1) the present applicability of the November 29, 1961, Memorandum of Understanding between the IBPAT and the OP&CMIA; (2) the present applicability of the Decision of Record dated May 19, 1947, contained on pages 144-145 of the 'Green Book'; and (3) all other evidence any party desires to submit."

The letters of both the Painters' Union and the Plasterers' Union request referral of the disputes to a Hearings Panel although they differ with respect to the issues in the case.

Under these circumstances, it is the ruling of the Joint Administrative Committee that it is proper to give continuing effect to the action of December 11, 1973 referred to above. This would include referral of the disputes in accordance with Article X, Section 2 to the Impartial Umpire. We deem the vote of the Joint Administrative Committee on December 11, 1973 as including the invocation of the full procedures of Article X, Section 2. We do not accept the view that the lapse of time in the facts of this case terminates the effectiveness of the aforesaid vote.

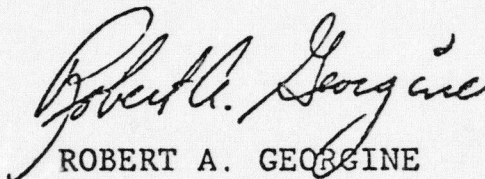
In addition, we rule that the letters of December 11, 1975 of General President Raftery to the Joint Administrative Committee and of March 12, 1976 of General President Power to the Joint

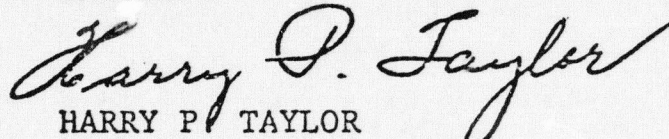
^{1/}The IBPAT advised the Committee in its December 11, 1975 letter that the issue to be submitted to the Hearings Panel was the applicability of the 1961 Memorandum and further stated that 'that is the sole issue to be referred, the sole issue to be decided and the sole issue as to which a decision will bind this International.'"

Administrative Committee constitute a request for referral of these disputes to a Hearings Panel in accordance with the language and intent of Article VI, Section 4 of the Plan.

It is suggested that the Impartial Umpire review the precedents in the case of Lathers, et al. v. Dunlop, et al. for two separate hearings: one on procedural issues, scope of the case and other threshold questions and (2) the merits of the questions together with such preliminary conferences that may be deemed desirable.

The International Unions, parties in this case, are authorized to make available to the U. S. Court of Appeals for the Second Circuit copies of the instant document.


ROBERT A. GEORGINE
Chairman


HARRY P. TAYLOR
Vice Chairman

Accepted:

<u>William R. Jones Jr</u> (Name)	<u>June 17, 1976</u> (Date)
<u>Martin J. Ward</u>	<u>June 15, 1976</u>
<u>William A. Lee</u>	<u>6/15/1976</u>
<u>Charles H. Ballard</u>	<u>6/16/1976</u>
<u>Hamlet P. LeHarten</u>	<u>6/21/1976</u>

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DRYWALL TAPERS AND POINTERS OF
GREATER NEW YORK, LOCAL 1974,

and

CHARLES LONG, et al.,
individually, etc.,

Plaintiffs-Appellees,

v.

OPERATIVE PLASTERERS' AND CEMENT
MASONS' INTERNATIONAL ASSOCIATION,
et al.,

Defendants-Appellants.

No. 76-7108

CERTIFICATE OF SERVICE

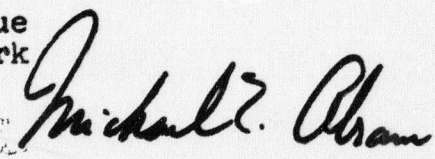
I hereby certify that one (1) copy of Appellant's Motion to Recall Mandate and two (2) copies of Appellant's Petition for Rehearing have this day been served by first class mail upon the following counsel at the addresses listed below:

Burton H. Hall, Esq.
401 Broadway
New York, New York

David Baar, Esq.
Baar & Peer
1101 17th Street, N.W.
Washington, D.C. 20036

Dizak & Lashaw
342 Madison Avenue
New York, New York

New York, New York
June 29, 1976


MICHAEL E. ABRAM